

CONVEYING CERTAIN LANDS IN LANE COUNTY, OREG.

SEPTEMBER 29 (legislative day, SEPTEMBER 26), 1983.—Ordered to be printed

Mr. McCLURE, from the Committee on Energy and Natural Resources,
submitted the following

REPORT

[To accompany S. 1042]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1042) to convey certain lands in Lane County, Oreg., having considered the same, reports favorably thereon with an amendment to the text and recommends that the bill, as amended, do pass.

The amendment is as follows:

On page 1, line 8, delete "June 27, 1957," and insert in lieu thereof "November 12, 1959,".

PURPOSE

S. 1042, as reported, would authorize the Secretary of the Interior to convey to any person, without consideration, the real property they claim to have been deprived of in Lane County, Oreg., as a result of a particular Bureau of Land Management (BLM) survey. All right, title, and interest of the United States to such property could be conveyed if an application, accompanied by such proof of title, description of land, and other information as the Secretary of the Interior may require, is received by the Secretary within 5 years after enactment of the bill.

BACKGROUND AND NEED

In 1959, the BLM resurveyed Section 31, Township 21, South Range 1 West in Lane County, Oreg., correcting errors in a 1941 survey of a portion of this tract. The BLM survey indicated that the private surveyor had not used proper public lands surveying techniques or followed the official survey made in 1873. These errors resulted in encroachments onto Federal land by adjacent owners. S. 1042 would convey the property encroached upon to those adjacent owners.

The BLM estimate of the fair market value as of July 1982 for the 3.1 acres is \$45,000. The BLM estimate of the administrative costs that

would be incurred to convey the lands is \$9,500. The administrative costs include the preparation of a supplemental plot by a cadastral survey crew (\$8,000) and the preparation of the patent and other legal documents (\$1,500).

LEGISLATIVE HISTORY

S. 1042 was introduced on April 13, 1983. A hearing before the Public Lands and Reserved Water Subcommittee on S. 1042 was held on May 17, 1983. The administration opposes the enactment of S. 1042. In an open business session on August 4, 1983, the Senate Committee on Energy and Natural Resources ordered S. 1042 reported favorably with an amendment as described herein.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE.

The Senate Committee on Energy and Natural Resources in an open business session on August 4, 1983, by a majority vote of a quorum present recommends the Senate pass S. 1042 with an amendment as described herein.

The rollcall vote on reporting the measure was 16 yeas, 3 nays as follows:

YEAS	NAYS
Mr. McClure	Mr. Metzenbaum ¹
Mr. Hatfield	Mr. Tsongas
Mr. Weicker ¹	Mr. Bradley
Mr. Domenici	
Mr. Wallop	
Mr. Warner	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Chafee	
Mr. Heinz ¹	
Mr. Johnston	
Mr. Jackson	
Mr. Bumpers	
Mr. Ford	
Mr. Matsunaga ¹	

¹ Indicates voted by proxy.

COMMITTEE AMENDMENT

The committee adopted a technical amendment correcting the date of the BLM survey. The correct date is November 12, 1959.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., August 31, 1983.

HON. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 1042, a bill to convey certain lands in Lane County, Oreg., as ordered reported by the Senate Committee on Energy and Natural Resources, August 4, 1983.

This bill authorizes the Secretary of the Interior to convey to private parties, without consideration, certain lands in Lane County, Oreg. Preliminary Bureau of Land Management estimates indicate that the value of the land to be conveyed is approximately \$45,000. The administrative costs of the conveyance are not expected to be significant.

Enactment of this bill would not affect the budgets of State and local governments.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1042 as reported. S. 1042 would convey certain lands in Lane County, Oreg.

The bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little if any additional paperwork would result from the enactment of S. 1042.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the committee from the Department of the Interior setting forth executive agency recommendations relating to S. 1042 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June, 15, 1983.

HON. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 1042, a bill "To convey certain lands in Lane Country, Oregon."

We strongly oppose enactment of S. 1042.

S. 1042 would authorize the Secretary of the Interior to convey to any person, without consideration, the real property they claim to have been deprived of in Lane County, Oreg., as a result of a particular Bureau of Land Management (BLM) resurvey. All right, title, and interest of the United States to such property could be conveyed if an application, accompanied by such proof of title, description of land, and other information as the Secretary of the Interior may require, is received by the Secretary within 5 years after enactment of the bill.

In 1959, the BLM resurveyed Section 31, Township 21 South, Range 1 West in Lane County, Oreg., correcting errors in a 1941 private survey of a portion of this tract. (In the bill, this Bureau survey is incorrectly referred to as the survey of June 27, 1957. This is the date of the special instructions guiding the resurvey. The appropriate reference to the survey is the date of its approval, November 12, 1959.) The BLM survey indicated that the private surveyor had not used proper public lands surveying techniques or followed the official survey made in 1873. These errors resulted in encroachments onto Federal land by adjacent owners. S. 1042 would convey the property encroached upon to these adjacent owners.

The title defects affecting the beneficiaries of this legislation were caused by the reliance of the developers of this tract and subsequent purchasers on an inaccurate private survey—not by any act of the United States. To require the United States to convey public lands to persons who rely on erroneous private surveys is not in the public interest. Moreover, enactment of this legislation would create a clearly undesirable precedent, encouraging other persons who do not verify the validity of their title to assert claims for conveyance, at no charge, of the Federal lands on which they are encroaching. Without doubt, these claims would hinder effective public land management.

We believe that the encroachments that are the subject of S. 1042 can be more appropriately resolved through existing BLM land conveyance authority than through special legislation. Under existing law, the Secretary can convey public lands once the comprehensive planning requirements of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701 et seq.) have been met. Section 203 of FLPMA authorizes public sales of parcels of public lands if certain disposal criteria are met. The BLM Oregon State Office has reported that the tract subject to this bill meets the first criterion in section 203(a)(1) that “such tract because of its location or other characteristics is difficult and uneconomical to manage as part of the public lands, and is not suitable for management by another Federal department or agency.” The Oregon State Office further reported that disposal of the land would not adversely affect BLM land and resource management programs.

Therefore, we would have no objection to conveying the tract through normal administrative means, if fair market value were paid for it. This payment would be in accordance with section 203 of FLPMA which provides that sales of public lands shall be made at a price not less than the fair market value of the land, as determined by the Secretary. He may also, under proper circumstances, sell land without competitive bidding or with modified competitive bidding,

recognizing equitable considerations or public policies. It is, nevertheless, well settled that U.S. policy is to require fair market value for the conveyance of public lands.

S. 1042 is inconsistent with this policy of requiring fair market value for conveyance of Federal lands. There was no error in the survey by the United States. Instead, the problem arose because of an improper private survey. There is, therefore, no justification for legislating a conveyance of this tract without payment of fair market value or for bypassing administrative procedures that already exist for the conveyance of public lands in appropriate cases.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

GARREY E. CARRUTHERS,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the committee notes that no changes in existing law are made by the bill S. 1042 as ordered reported.



AMENDING THE RECLAMATION SAFETY OF DAMS ACT OF 1978

SEPTEMBER 29 (Legislative day, SEPTEMBER 26), 1983.—Ordered to be printed

Mr. McCLURE, from the Committee on Energy and Natural Resources,
submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 672]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 672) to amend the Reclamation Safety of Dams Act of 1978 to authorize additional appropriations, and for other purposes, having considered the same, reports favorably thereon with amendments to the text and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Page 1, line 7, insert the following new paragraph and renumber subsequent paragraphs accordingly:

(2) In section 2, at the end of the first sentence strike the period and insert, "including the construction of levees or installation of flood warning systems: Provided, That no replacement dam costing in excess of \$10,000,000 may be constructed without further authorization by Congress: Provided further, That funds appropriated pursuant to the authority of this Act shall not be used to replace the Jackson Lake Dam, Minidoka Project, Idaho and Wyoming, with a separate storage or detention facility at another location."

2. Page 2, line 2, strike "\$500,000,000,;" and insert "\$650,000,000,;"

3. Page 2, line 18, strike "Twin Buttes Dam, Texas;".

4. Page 2, line 21, strike "Twin Buttes Dam, Texas, and".

PURPOSE

As ordered reported, S. 672 would amend the Reclamation Safety of Dams Act of 1978 (Public Law 95-578) to authorize the appropriation of an additional \$650 million. The measure would also provide authority to construct replacement structures costing less than \$10 million and would allow for waiver of the 60-day waiting period prior to obligation of funds under the program. In addition, S. 672 would authorize the Secretary of the Interior to construct levees and flood warning systems under the dam safety program. The measure also extends the coverage of the program to include certain dams.

BACKGROUND AND NEED

The Act of November 2, 1978 (Public Law 95-578) authorized the appropriation of \$100 million to the Secretary of the Interior for purposes of a safety of dams program for the Bureau of Reclamation and established the parameters under which the Secretary was authorized to construct, operate, and maintain new or modified features at existing Federal reclamation dams for safety of dams purposes. Recent events of the time (the Rapid City, S. Dak. flood and the failure of the Bureau's Teton Dam in Idaho) had focused concern upon hazards presented by floods and the failure of dams or related structures.

Traditionally, the Bureau of Reclamation had maintained a formal program of inspection under its Examination of Existing Structures Program of the facilities related to the 333 reservoir impoundments under the Bureau's jurisdiction. Major modifications of dams for safety purposes had been authorized by Congress on a case-by-case basis; each project considered in a separate authorizing bill. The 1978 Safety of Dams Act provided the Secretary with permanent authority to undertake safety of dams modifications rather than having to come to the Congress for each project. However, the Act was specific that the funds were to be used only for safety purposes and not for providing additional water storage capacity or the development of benefits above those provided by the original structures. Costs of the program which resulted from age and normal deterioration of structures or from nonperformance of reasonable and normal maintenance were to be treated as projects costs and reimbursable by project participants in accordance with existing law.

Since initiation of the program, estimated costs of dam safety activities have increased as a result of inflation and the discovery of additional safety problems which need to be addressed. During the hearings on S. 672, the Administration testified that in addition to the 13 dams identified at the outset of the program in 1978, an additional 40 dams have been identified as needing remedial work and further expenditures have been identified. The current authorization of \$100 million is inadequate to fund the additional work which is estimated to cost up to \$650 million. An increase in the authorization for the program of an additional \$650 million will permit dam safety activities at the newly identified projects as well as allow for the increase in cost due to inflation.

LEGISLATIVE HISTORY

S. 672 was introduced on March 3, 1983, and is sponsored by Senators McClure, Goldwater, Wallop, DeConcini and Cranston. A similar bill, S. 739, was introduced on March 9, 1983, by Senators DeConcini, McClure, Goldwater, Wallop, and Cranston. Both bills were the subject of hearings before the Subcommittee on Water and Power on March 24, 1983.

A companion measure, H.R. 1652, was introduced in the House on February 24, 1983, and is sponsored by Congressmen Kazen, Udall, Cheney, Kogovsek, McCain, McNulty, Lehman of California, and Seiberling. H.R. 1652 was reported by the House Committee on Interior and Insular Affairs on May 16, 1983 (H. Rept. 98-168).

During the 97th Congress a similar bill, S. 956, was reported on August 19, 1982 (S. Rept. 97-533). A House version of the bill, H.R. 3208 passed the House on April 29, 1982 (H. Rept. 97-478). The 97th Congress adjourned prior to final consideration of either bill.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on September 21, 1983, by vote of a quorum present recommends that the Senate pass S. 672 if amended as described herein.

The rollcall vote on reporting the measure was 13 yeas, 5 nays as follows:

YEAS	NAYS
Mr. McClure	Mr. Chafee ¹
Mr. Hatfield ¹	Mr. Heinz ¹
Mr. Weicker ¹	Mr. Metzenbaum
Mr. Domenici ¹	Mr. Tsongas ¹
Mr. Wallop	Mr. Bradley
Mr. Warner	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Johnston	
Mr. Ford	
Mr. Matsunaga ¹	
Mr. Melcher	

¹ Indicates vote by proxy.

EXPLANATION OF COMMITTEE AMENDMENTS

1. The first amendment expands the authority granted to the Secretary of the Interior under the Reclamation Safety of Dams Act to include construction of levees and installation of flood warning systems. The amendment also provides that replacement dams costing in excess of \$10 million will need Congressional authorization. During Committee discussion of the amendment, it was noted that the Secretary should consider replacement dams in the event that they were more

economical than repair of the original structure. The Committee also noted during discussion of the amendment that Jackson Lake Dam is within Grand Teton National Park and expressed concern that the selected dam safety work should fully address the problem of dam failure while seeking to minimize the impact on the Park. Specifically, the Committee determined that funds appropriated pursuant to this Act shall not be used to replace the Jackson Dam with a separate storage or detention facility at another location or to increase the capacity of the existing impoundment.

2. This amendment provides for an appropriation authority of \$650 million rather than \$550 million as had been originally contained in the measure. The increase of \$100 million reflects additional safety related works which have become evident subsequent to introduction of S. 672.

3. This amendment strikes reference to Twin Buttes Dam in Texas as the related safety work included in the bill as introduced was authorized by the Energy and Water Appropriations Act of 1984.

4. Same as No. 3.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of S. 672 has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 27, 1983.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 672, a bill to amend the Reclamation Safety of Dams Act of 1978 to authorize additional appropriations, and for other purposes.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM
(For Rudolph G. Penner, Director).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

SEPTEMBER 27, 1983.

1. Bill number: S. 672.
2. Bill title. A bill to amend the Reclamation Safety Dams Act of 1978 to authorize additional appropriations, and for other purposes.
3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources, September 21, 1983.
4. Bill purpose: This bill increases the existing authorization of appropriations for safety modifications at existing dams from \$100 million to \$750 million; authorizes replacement of structure costing less than \$10 million; and includes certain reclamation project dams not in federal ownership under the authorities provided in this bill.

Through fiscal year 1982 approximately \$23 million was spent under the Reclamation Safety Dams Act of 1978, and it is estimated that an additional \$11 million has been spent during fiscal year 1983. The 1984 appropriation is \$13 million.

5. Estimated cost to the Federal Government:

Estimated authorization level:

Fiscal year:	Millions
1984 -----	\$13
1985 -----	45
1986 -----	70
1987 -----	74
1988 -----	100
After 1988 -----	348

Estimated outlays:

Fiscal year:	
1984 -----	11
1985 -----	41
1986 -----	61
1987 -----	74
1988 -----	96
After 1988 -----	362

The costs of this bill fall within budget function 300.

Basis of estimate.—The authorization level is stated in the bill. For the purpose of this estimate, it is assumed that the full amount authorized will be appropriated incrementally as funds are needed.

Under the Reclamation Safety Dams Act of 1978 the Bureau of Reclamation initiated design or construction on 12 dams. Under the currently planned program of construction, the necessary funding for these projects would exceed the \$100 million authorized in the Act of 1978 in fiscal year 1989. For new work, the Bureau of Reclamation has identified 40 dams on which safety modifications are necessary. Based on information from the Bureau of Reclamation as to a realistic rate of construction and CBO's projections of cost increases, it is estimated that additional outlays of approximately \$11 million in fiscal year 1984, \$41 million in fiscal year 1985, \$66 million in fiscal year 1986, \$74 million in fiscal year 1987, and \$96 million in fiscal year 1988 will be incurred by the federal government for the safety improvements at the 40 dams identified—assuming appropriation of the necessary sums each year. Additional outlays of approximately \$362 million will be incurred after fiscal year 1987.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On May 13, 1983, the Congressional Budget Office prepared a cost estimate for H.R. 1652, a similar bill ordered reported by the House Committee on Interior and Insular Affairs, May 10, 1983. H.R. 1652 also increased to \$750 million the authorization for safety modifications, but unlike S. 672, included provisions for cost indexing to adjust for changes in construction costs. The cost estimates for the two bills reflect this difference.

9. Estimate prepared by: Debbie Goldberg.

10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum,
Assistant Director for Budget Analysis).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred by the passage of S. 672.

It is the Committee's opinion that the bill is not a regulatory measure in the sense of imposing Government established standards or significant responsibilities on private individuals or businesses and that little, if any, additional paperwork would result from enactment of S. 672 other than that which would be normally associated with similar Federal construction programs and activities.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports received by the Committee from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations relating to S. 672 are set forth as follows:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 9, 1983.

HON. JAMES A. McCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 739, a bill "To amend the Reclamation Safety of Dams Act of 1978 to authorize additional appropriations, and for other purposes."

We recommend enactment of S. 739 with the amendments discussed in this report.

We have also been asked to comment on S. 672. Both S. 672 and S. 739 would raise the appropriation ceiling of the Reclamation Safety of Dams Act of 1978 from \$100 million to \$650 million and provide for inclusion of certain dams under the authority of the Act. Both bills would allow Congressional committee approval of modification reports in less than the required 60 day period. S. 672 also provides authority to replace as well as modify Reclamation Dams for purposes of dam safety. Since the two bills are so similar, we will comment only on S. 739.

Federal agencies in general, and the Bureau of Reclamation in particular, are implementing dam safety programs and making decisions consistent with the "Federal Guidelines for Dam Safety" dated June 25, 1979. Those guidelines call for selection of flood and earthquake design magnitudes in order to minimize the chance of their being exceeded, where loss of human life or significant property damage is a concern. Reclamation's evaluation criteria for existing dams follows those guidelines in determining the existence of a dam safety hazard. A dam safety hazard is defined as a structural, operational or geographically induced deficiency which could cause or contribute to a dam failure, either with the passage of time or by a specific natural event.

If a dam safety hazard exists, the decision for corrective action would take into account several variables such as the number of people endangered, the ease of evacuation, the opportunity to give advance warning of impending structural failure, the seriousness or significance of the problem, the cost of structural repair, and the feasibility and effectiveness of reservoir operating restrictions. Our program emphasis is upon protection of human life and reduction of the potential for economic loss while maintaining project benefits, all with a sharp eye upon the financial impacts to the general taxpayer.

The total estimated cost of safety of dams work proposed in Reclamation's fiscal year 1984 program is \$95.5 million. When similar legislation was considered during the 97th Congress, we projected a total estimated cost for work then underway of \$129.4 million. The reduction from our previous projection is due primarily to favorable bids received on construction, reduction in scope and work to be performed on some dams and reduction in our modification report and preconstruction planning expectations.

To initiate and complete additional work which is currently identified, an increase in the existing \$100 million appropriation ceiling is necessary. Our Safety Evaluation of Existing Dams examinations have identified an additional 40 dams that may require safety modifications. Frequently, the identified deficiencies exist because older dams were not designed to meet current standards, cannot safely pass newly calculated maximum hydrologic events, or cannot sustain estimated maximum seismic events. Other problems are experienced where dams have reduced life due to deterioration because they were constructed using inferior materials or presently outdated construction techniques. An estimated \$550 million is needed for that additional work. We therefore support the increase of the current appropriation ceiling to \$650 million.

To provide for full implementation of the Reclamation Safety Dams Act, consistent with the President's program for economic recovery, we recommend five amendments to the bill. Specific language for each of our proposed amendments is enclosed.

Our first amendment would provide authority for the Secretary of the Interior to perform corrective or mitigative actions instead of "modifications" of existing dams. Section 2 of the Reclamation Safety of Dams Act simply gives the Secretary the authority to "perform such modifications as he determines to be reasonably required." In some instances it would be less costly to impose operating restrictions; to acquire potentially flood affected lands; to construct levees, downstream detention dams, or replacement dams; to install flood warning systems; or to purchase the necessary water right to breach a dam and take it out of service. In many situations, structural modification of an existing deficient dam may be more costly than pursuing an alternate course of action even to the extent of replacing the dam, as proposed in S. 672.

Our second amendment simply conforms sections 5 of the Reclamation Safety of Dams Act of 1978 with our proposed amendment to section 2 of the Act by substituting a new section 2 for S. 739.

The third amendment would modify the repayment requirements for safety-of-dams work. This Administration is committed to re-

ducing the Federal budget and believes that beneficiaries of Federal projects should, in most cases, contribute to those projects. Our proposed amendment will provide for project beneficiary, State and local participation in the cost of making Reclamation dams safe. This is appropriate because safety considerations permeate every aspect of dam design and construction. If the dam develops defects over time or if additional work is needed to meet current safety standards, there is no reason to forego that cost sharing or reimbursement that would have been due had the remedial work been incorporated into the initial construction. Moreover, the least costly solution to a safety problem may be less acceptable to local residents than some other solution which would maintain the current level of water service. The long range effects of correcting safety problems without cost sharing or reimbursement is to make all replacement of existing investment free to its users and beneficiaries, and place the total cost on the general taxpayer. Our proposal recognizes that some irrigation districts may not be sufficiently profitable to repay the total allocated cost so the reimbursement amount is limited to the ability to pay. Where ability to pay is not a constraint, we will be discussing with project sponsors the feasibility of their assisting in the financing of this work.

The fourth amendment we recommend would revise section 5 of the Act. The Secretary of the Interior should be exempted from the modification report requirements of section 5 when safety modification costs are estimated to be \$1,000,000 or less. This would relieve the Bureau of Reclamation of the costly and lengthy reporting and approval process and thus increase management efficiency on minor safety of dams modification work.

Our fifth amendment would delete the language concerning Twin Buttes Dam, Texas, and Foss Dam, Oklahoma, from section (b) of the bill. We believe that the foundation treatment, drainage and instrumentation work costs referred to in section (b) should be treated as project costs in accordance with the original project authorizations.

In sum, the amendments will improve several important aspects of the dam safety program. They will provide for a realistic management approach to the problem of cost sharing and allow us to increase the number of dams we are working on. The proposed amendments will also provide for elimination of costly reports for minor work. They provide appropriate authority to perform corrective work other than structural modification or replacement of dams when that alternative is the least costly solution to a dam safety problem.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

GARREY E. CARRUTHERS,
Assistant Secretary.

Enclosure.

SUGGESTED DEPARTMENT OF THE INTERIOR AMENDMENTS TO S. 739

1. Add the following new section:

(c) Section 2 of the Reclamation Safety of Dams Act of 1978 (92

Stat. 2471) is amended by striking all after "authorized" and inserting in lieu thereof:

to provide for the correction of dam safety deficiencies in Bureau of Reclamation dams through construction of corrective works or other measures as he deems necessary. The Secretary is further authorized to provide for such dam safety hazard mitigation alternatives in lieu of constructing corrective works or in addition to such construction as he determines to be economically justified. Said performance of work shall be in accordance with the Federal Reclamation laws (Act of June 17, 1902, 32 Stat. 388, and acts amendatory or supplementary thereto).

2. Delete section (a) (2) and insert in lieu thereof the following: (2) by striking all after the words "for carrying out actual construction" and inserting in lieu thereof:

for work performed under authority of this Act prior to sixty days (which sixty days shall not include days on which either the House of Representatives or the Senate is not in session because of adjournment of more than three calendar days to a day certain) from the date the Secretary has transmitted a report on such existing dam to Congress, provided that an obligation made pursuant to the preceding proviso may be made prior to the expiration of sixty days in any case in which the respective committees of jurisdiction in the House of Representatives and the Senate approve an earlier date and notify the Secretary in writing of such approval. The report required to be submitted by this section will consist of a finding by the Secretary that such work is required in order to insure safety of the existing dam or to prevent the loss of human life and property damage. Such finding shall be accompanied by a technical report containing information on the need for corrective work or hazard mitigation, alternatives considered, the estimated cost of the proposed action, and environmental impacts if any resulting from implementation of the recommended plan.

3. Add the following new section:

(d) Section 4 of the Reclamation Safety Dams Act of 1978 (92 Stat. 2471) is deleted and the following is substituted in lieu thereof:

SEC. 4. (a) Costs hereafter incurred in the performance of safety of dams work under this Act shall be allocated in proportion to total benefits to current functions served by the dam, project, unit, or division, as determined by the Secretary at the time of completion of the work undertaken pursuant to this Act. Costs allocated to irrigation water service and capable of being repaid by the irrigation water users shall be reimbursed within 50 years of the year in which the work undertaken pursuant to this Act is substantially complete. Costs allocated to irrigation water service which are beyond the water users' capability to repay will be nonreimbursable.

Costs allocated to recreation or fish and wildlife enhancement shall be reimbursed by the State or States in which the dam is located or by other non-Federal project sponsor.

(b) Costs allocated to municipal, industrial, and miscellaneous water service, commercial power, and recreation and fish and wildlife enhancement shall be repaid within 50 years with interest. The interest rate used pursuant to this section shall be determined by the Secretary of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period, during the month preceding the fiscal year in which the costs are incurred for work undertaken pursuant to this Act. To the extent that more than one interest rate is determined pursuant to the preceding sentence, the Secretary of the Treasury shall establish for repayment purposes an interest rate at a weighted average of the rates so determined.

(c) The Secretary is authorized to negotiate appropriate contracts with project beneficiaries providing for the return of reimbursable costs through water charges, ad valorem taxes, account charges, or other means he deems appropriate.

(d) Costs incurred in performance of periodic safety evaluation inspection and analysis, and preparation of modification reports for the Congress, shall be nonreimbursable and nonreturnable under Federal reclamation law. Fifty percent of costs incurred in the preparation of project design shall be paid by project beneficiaries in advance of construction.

4. Add the following new section:

(e) Section 5 of the Reclamation Safety of Dams Act of 1978 (92 Stat. 2471) is amended by inserting "exceeding \$1,000,000" after "funds".

5. On page 2, line 13, strike out "The" and all that follows through "laws." on page 2, line 17.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., May 4, 1983.

HON. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your requests of March 7, 1983, and March 15, 1983, respectively, for the views of this office on S. 672 and S. 739, similar bills that are both entitled "To amend the Reclamation Safety of Dams Act of 1978 to authorize additional appropriations, and for other purposes."

In his March 24, 1983 testimony before the Subcommittee on Water Resources, Mr. Robert N. Broadbent, Commissioner of the Department of the Interior's Bureau of Reclamation stated Administration support, with amendments, of either S. 672 or S. 739. Most significant among these amendments was one that would require local cost-sharing for dam safety work.

We concur in the views expressed by Commissioner Broadbent and support enactment of either S. 672 or S. 739, but only if amended as outlined in his March 24 testimony. Enactment of such legislation in this amended form would be in accord with the program of the President.

Sincerely,

JAMES M. FREY,
Assistant Director for Legislative Reference.

ADDITIONAL VIEWS MR. WALLOP

In reviewing the issues of public health and safety and correlating them with the national values and benefits that our national parks provide, a classic example is evidenced in Grand Teton National Park in Wyoming. There, the Jackson Lake Dam, built just after the turn of the century with the best technology available at that time, in a frontier State is by today's standards, said to be unsafe.

The alternatives to make this facility safe from potential earthquake damages are limited in my estimation to those alternatives which are compatible with the protection of the natural resources of the park. I would urge close consultation between the Bureau of Reclamation and the National Park Service in selecting material sites, times and method of construction, work seasons, visitor safety and use, wildlife protection and mitigation and other issues not normally emphasized in dam safety projects.

The dam must be made safe. The alternative of a permanently lowered lake level without repair or rehabilitation is, to me, environmentally unacceptable and would greatly diminish visitor use and enjoyment of the area.

Special care must be taken by the agencies, contractors, and the public involved to achieve the proper solution that provides safety with minimum impact on park resources.

MALCOLM WALLOP.

MINORITY VIEWS OF MESSRS. METZENBAUM AND BRADLEY

We support dam safety legislation wholeheartedly. But we also believe that the costs of dam safety repairs should be borne by those who directly benefit from the dam. Under S. 672, however, these costs would be paid by taxpayers around the country while the local beneficiaries, the persons and communities for whom the dams were built and who have the most to gain from repairs, would pay nothing. That is why we opposed this legislation.

During committee markup, we offered an amendment to acquire local users to reimburse the treasury for the safety repairs in the same manner that original construction costs were repaid. The amendment was defeated, 11-8. We intend to offer it on the Senate floor.

The amendment was sought by the Reagan administration, as well as the Carter administration. It is supported by such diverse groups as the National Taxpayers Union, the National Wildlife Federation and the National Audubon Society. Last year, it passed the House by a vote of 212-140.

Dam building costs have always been allocated among the various project beneficiaries and safety improvements are an integral part of the capital investment made in reclamation projects.

As the Reagan administration said in its testimony before the Senate Energy Committee,

Beneficiaries of federal projects should, in most cases, contribute to these projects . . . We do not believe that safety costs per se should be exempted from reimbursement or cost sharing. This is appropriate as safety considerations permeate every aspect of dam design and construction. If the dam develops defects over time or if additional work is needed to meet current safety standards, there is no reason to forego that cost sharing or reimbursement that would have been due had the remedial work been incorporated into the initial construction . . .

The long range effects of correcting safety problems without cost sharing or reimbursement is to make all replacement of existing investment free to its users and beneficiaries, and place the total cost on the general taxpayer.

Dam safety repairs will ensure the continued soundness of the dams. The simple fact is that beneficiaries will not continue to benefit from a dam that has failed. Their direct stake in those repairs is obvious. And it naturally follows that they should help pay for the repairs. The important point is that the federal government is not responsible for the present dam problems and the general taxpayer should not bear the entire burden of funding the repairs.

A second reason for reimbursement on these Bureau of Reclamation projects is equity. The Army Corps of Engineers, which builds

dams all over the country, has adopted a reimbursement policy for dam safety repairs. More than 150 corps dams that face safety work in the next two decades contain dam safety reimbursement requirements. There is no logical reason to impose repayment on corps projects while beneficiaries of reclamation projects in the West are treated more favorably.

Finally, it should be clear that our amendment would not delay dam safety work nor jeopardize the lives or property of anyone. The Bureau of Reclamation would not be required under the amendment to secure payment before undertaking dam safety work. Rather, it would be directed to seek reimbursement from project beneficiaries within fifty years.

HOWARD M. METZENBAUM.
BILL BRADLEY.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 672, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

RECLAMATION SAFETY OF DAMS ACT OF 1978

(92 Stat. 2471; 43 U.S.C. 506, et. seq.)

That this Act shall be cited as the "Reclamation Safety of Dams Act of 1978".

SEC. 2. In order to preserve the structural safety of Bureau of Reclamation dams and related facilities the Secretary of the Interior is authorized to perform such modifications *or replacement* as he determines to be reasonably required[.] *including the construction of levees or installation of flood warning systems: Provided, That no replacement dam costing in excess of \$10,000,000 may be constructed without further authorization by Congress: Provided further, That funds appropriated pursuant to the authority of this Act shall not be used to replace the Jackson Lake Dam, Minidoka Project, Idaho and Wyoming, with a separate storage or detention facility at another location.* Said performance of work shall be in accordance with the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory or supplementary thereto).

SEC. 3. Construction authorized by this Act shall be for the purposes of dam safety and not for the specific purposes of providing additional conservation storage capacity or of developing benefits over and above those provided by the original dams and reservoirs. Nothing in this Act shall be construed to reduce the amount of project costs allocated to reimbursable purposes heretofore authorized.

SEC. 4. (a) Costs therefore or hereafter incurred in the modification *or replacement* of structures under this Act, the cause of which results from age and normal deterioration of the structure or from nonperformance of reasonable and normal maintenance of the structure by the operating entity shall be considered as project costs and will be

allocated to the purposes for which the structure was authorized initially to be constructed and will be reimbursable as provided by existing law.

(b) Costs heretofore or hereafter incurred in the modification or replacement of structures under this Act, the cause of which results from new hydrologic or seismic data or changes in state-of-the-art criteria deemed necessary for safety purposes shall be nonreimbursable and nonreturnable under the Federal Reclamation law.

SEC. 5. There are hereby authorized to be appropriated for fiscal year 1979 and ensuing fiscal years such sums as may be necessary, but not to exceed \$100,000,000[.] and, effective October 1, 1983, not to exceed an additional \$650,000,000, to carry out the provisions of this Act to remain available until expended if so provided by the appropriations Act: *Provided*, That no funds shall be obligated for carrying out actual construction to modify or replace an existing dam under authority of this Act prior to sixty days (which sixty days shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) from the date that the Secretary has transmitted a report on such existing dam to the Congress[.]: *Provided further*, That such obligation may be made prior to the expiration of such sixty days in any case in which the respective Committee of jurisdiction in the House of Representatives and the Senate approve an earlier date and notifies the Secretary in writing, of such approval. The report required to be submitted by this section will consist of a finding by the Secretary of the Interior to the effect that modifications or replacement are required to be made to insure the safety of an existing dam. Such finding shall be accompanied by a technical report containing information on the need for structural modification or replacement, the corrective action deemed to be required, alternative solutions to structural modification or replacement that were considered, the estimated cost of needed modifications or replacement, and environmental impacts if any resulting from the implementation of the recommended plan of modification or replacement.

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Sec. 12. Included within the scope of this Act are Fish Lake, Four Mile, Ochoco, Savage Rapids Diversion and Warm Springs Dams, Oregon; Como Dam, Montana; Little Wood River Dam, Idaho; Foss Dam, Oklahoma and related facilities; Provided, That the cost of foundation treatment, drainage, and instrumentation work planned or underway at Foss Dam, Oklahoma, shall be nonreimbursable and nonreturnable under Federal Reclamation laws.